

ADM File No. 2006-47
3/29/2012 8:26 AM

We write to comment on the proposed changes to MCR 3.101.

MCR 3.101(D) currently states that, "The Clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf makes and files a statement verified in the manner provided in MCR 2.114 ." The proposed amendment eliminates the language that the writ must appear to be correct and comply with the court rules and statutes.

As legal aid attorneys, we see a vast number of improper garnishment orders -- even with the critical eye of the court clerk first reviewing the proposed writs. Problems with the writs include mathematical errors, arbitrarily added and excessive costs and fees, and uncredited payments and prior collections. The verifications submitted to support the writs are also often faulty -- routinely prepared by office staff based on electronic records of purchased debt that includes no underlying documentation, then verified by attorneys in that same office have no more information about the debt than the staff and who are therefore in no position to actually verify anything.

Forcing court clerks to issue obviously defective garnishments would greatly tip an already unlevel playing field, dominated by large debt-buying firms, to the detriment of self-represented litigants. In our experience, the current court rule is effective and does not need to be changed.

Thank you for your consideration of these comments.

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